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## **DEPARTMENT OF LABOR**

**29 CFR 2520; 29 CFR 2590**

**RIN 1210-AB63**

### **Proposed Revision of Annual Information Return/Reports; Proposed Rule**

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Extension of comment period.

**SUMMARY:** The purpose of this Notice is to announce an extension of the comment period on the Notice of Proposed Revision of Annual Information Return/Reports published in the Federal Register on July 21, 2016, by the Department of Labor, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation, and the separate but related Notice of Proposed Rulemaking published in the Federal Register on July 21, 2016, by the Department of Labor.

**DATES:** The comment period for the Notice of Proposed Revision of Annual Information Return/Reports and the Notice of Proposed Rulemaking is extended to December 5, 2016.

**ADDRESSES:** To facilitate the receipt and processing of written comment letters on the proposed regulation, interested persons are encouraged to submit their comments electronically. You may submit comments, identified by RIN 1210-AB63, by any of the methods described in the Notice of Proposed Revision of Annual Information Return/Reports (81 FR 47534) and Notice of Proposed Rulemaking (81 FR 47496). All comments received will be made available to the public, posted without change to [www.regulations.gov](http://www.regulations.gov) and [www.dol.gov/ebsa](http://www.dol.gov/ebsa), and made

available for public inspection at the Public Disclosure Room, N-1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Mara S. Blumenthal, Employee Benefits Security Administration (EBSA), U.S. Department of Labor, (202) 693-8523 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The U.S. Department of Labor's Employee Benefits Security Administration, together with the Internal Revenue Service and the Pension Benefit Guaranty Corporation (together Agencies) published a Notice of Proposed Revision of Annual Information Return/Reports in the Federal Register on July 21, 2016 (81 FR 47534). The proposed revisions involved the Form 5500 Annual Return/Report of Employee Benefit Plan and the Form 5500-SF Short Form Annual Return/Report of Small Employee Benefit Plan. The Department of Labor simultaneously published a Notice of Proposed Rulemaking, which contains proposed amendments to the Department's related annual reporting regulations (81 FR 47496).

The Notices have generated substantial interest by stakeholders who wish to provide input into the development of the final form revisions and regulations. Several stakeholder groups submitted written requests for additional time to comment. Comments on the proposal, including such requests, are made available electronically at [www.dol.gov/agencies/ebsa](http://www.dol.gov/agencies/ebsa). The commenters generally argued that the original 75-day comment period was not enough time given the scope and significance of the proposed form revisions and regulatory amendments. Some also noted the current deadline for submitting comments (October 4, 2016) is shortly

before the October 15, 2016 deadline for filing the 2015 Form 5500 and 2015 Form 5500-SF for calendar year plans relying on an IRS Form 5558 extension. The commenters stated that the proximity of the two deadlines would make it difficult for personnel involved in the evaluation of and preparation of comments regarding the proposed forms revision and regulatory amendments to devote adequate time to that work because the same personnel are already engaged in preparation and filing of 2015 Forms 5500 and Forms 5500-SF. Certain commenters also stated that staff responsible for contributing to comments on the forms revisions and regulatory proposals will be focused during the same time period on compliance activities related to the Department's final rule on conflicts of interest – retirement investment advice and related prohibited transaction exemptions. The commenters suggested different extensions that ranged from 60 days to 105 days.

The Agencies are interested in facilitating a robust and thoughtful public comment process on these important improvements to the Form 5500 and Form 5500-SF annual return/reports. An important goal for the Agencies is to complete the forms revision and regulatory amendments aspect of the project in advance of key procurement and system development deadlines that are part of the related effort to recompetes of the contract for the ERISA Filing Acceptance System II (EFAST2)—the wholly electronic system operated by a private-sector contractor for the processing of Form 5500 and Form 5500-SF annual return/report. The Agencies explained in the Federal Register Notices that the forms revision and regulatory amendments proposals generally are being coordinated with a recompetes of the EFAST2 contract. The Agencies also explained that the majority of proposed forms revisions are currently targeted for implementation in the Plan Year 2019 Form 5500/5500-SF annual return/reports. We also noted that development of EFAST2 changes pursuant to a new contract

could begin in spring 2018, with processing under such a new contract starting on January 1, 2020.

Based on the requests from a range of stakeholder groups, the Agencies have decided to extend the public comment period on the proposed forms revisions and regulatory amendments from the original October 4 deadline to December 5, 2016. This extension will provide interested persons with an additional two months to prepare and submit comments, while also respecting the need to keep the regulatory aspect of the project moving forward to keep pace with procurement and system development objectives of the recompetes contract acquisition plan. Although technically not published in the Federal Register until July 21, 2016, the Notice of Proposed Forms Revision and the Notice of Proposed Rulemaking were released to the public and made available online on July 11, 2016 — 10 days prior to the commencement of the formal comment period. The extension of the comment period to December 5, 2016, thus provides a total of 147 days to evaluate the proposal and provide written comments.

The Agencies are not prepared at this time to grant a more extended deadline for public comments on the proposed form revisions and regulatory amendments because of concern about potential adverse effects on the timing and cost of the EFAST2 recompetes process. In that regard, the Department published a “Request for Industry Feedback,” RFI: DOL-OPS-16-RFI-0716PML (available at [fbo.gov](http://fbo.gov)) in connection with the EFAST2 recompetes process, which also requested comments by October 4, 2016. The deadline for capable businesses to respond on the Request for Industry Feedback is not being extended in this Notice.

Finally, a number of commenters asked that the Agencies hold a public hearing on the proposals following the close of the written comment period. One commenter also asked that the

effective date of any final form changes be delayed until plan years beginning on or after January 1, 2020. In the Department's view, both requests are premature in the context of a decision whether to extend the public comment period on the proposals. It is not clear at this time that a public hearing will necessarily contribute to the decision-making process by clarifying one or more significant issues affecting the proposal, but the Agencies will be in a better position to evaluate that issue after receiving the public comments on the proposals. Similarly, the issue of the effective date of final form changes is better addressed in a final notice of form revisions after the Agencies have had the benefit of public input on the proposals and have decided upon the final form changes and regulatory amendments that will be adopted.

The Internal Revenue Service and the Pension Benefit Guaranty Corporation have agreed to this extension of the comment period for purposes of portions of the Notice of Proposed Forms Revision that address annual reporting requirements under the Internal Revenue Code and Title IV of ERISA.

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**Phyllis C. Borzi**

Assistant Secretary, Employee Benefits  
Security Administration, Department of Labor.

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